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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 MICHAEL W. BROMLEY,
7
8 Plaintiff,

9 v.

10 STATE OF WASHINGTON DSHS/ADSA et al.,
11
12 Defendants.

Case No. C07-1368 MJP

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

13 This matter comes before the Court on Defendants' motion for summary judgment. (Dkt.
14 No. 19.) After reviewing the motion, Plaintiff's response (Dkt. No. 26), Defendants' reply (Dkt.
15 No. 28), and all papers submitted in support thereof, the Court GRANTS in part and DENIES in
16 part for the reasons stated below.

17 **Background**

18 This litigation stems from Mr. Bromley's former employment as a social worker for the
19 Washington State Department of Social and Health Services ("DSHS"). Plaintiff's second
20 amended complaint ("SAC") alleges four causes of action against DSHS and individual
21 supervisors: (1) violation of the Americans with Disabilities Act ("ADA"); (2) violation of the
22 Washington Law Against Discrimination ("WLAD"); (3) outrage; and (4) a claim for injunctive
23 relief. (Dkt. No. 11.)

24 Defendants' original motion sought dismissal of all claims. However, Defendants have
25 withdrawn their argument that Mr. Bromley's ADA action is time-barred. (Dkt. No. 28 at 2.)
26 Remaining for the Court to decide are: (1) whether Defendants are immune from suit for
27

1 damages under the ADA; and (2) whether this Court has jurisdiction over Plaintiff's tort claims
2 given statutorily mandated tort claim filing requirements.

3 **Analysis**

4 1. Immunity from Damages Claims Under the ADA

5 The Ninth Circuit has held that the state and its employees are not subject to liability for
6 damages under Title I of the ADA, Walsh v. Nevada Dep't of Human Res., 471 F.3d 1033,
7 1037-38 (9th Cir. 2006), and that Title II of the ADA does not apply to employment actions,
8 Zimmerman v. Oregon Dep't of Justice, 170 F.3d 1169, 1173-75 (9th Cir. 1999). In light of this
9 precedent, Plaintiff's ADA claims for damages must be DISMISSED. Therefore, Plaintiff's only
10 remaining ADA claim is the cause of action for injunctive relief. (SAC at ¶¶ 7.1-7.2.)

11 2. Plaintiff's State Law Claims

12 Plaintiff brings state law claims against DSHS and the individual defendants for outrage
13 and violation of the WLAD. By statute, all tort law claims against the state or the state's
14 officers, employees or volunteers must be filed with the risk management division sixty days
15 before that plaintiff initiates a lawsuit. RCW 4.92.100, 4.92.110. Because Mr. Bromley has not
16 presented his state law claims to the risk management division, this Court does not have
17 jurisdiction over those claims and they must be DISMISSED.

18 Mr. Bromley argues that his claims against the individual defendants, alleging intentional
19 violations of the WLAD and outrage, should survive because they are brought against those
20 defendants in their individual capacities. See Jones v. University of Washington, 62 Wn. App.
21 653, 664 (Wash. App. Ct. 1991) ("RCW 4.92.110 applies to actions commenced against state
22 employees in their official capacities, but not to suits against those persons in their individual
23 capacities."). Plaintiff asserts that a state employee's intentionally tortious conduct is outside the
24 scope of his employment for purposes of the state tort filing statute.

25 Relying on Washington law, this Court has previously rejected Plaintiff's argument.
26 Atkins v. The Bremerton School Dist., 393 F. Supp. 2d 1065, 1069 (W.D.Wash. 2005) (citing

1 Robel v. Roundup, 148 Wash. 2d 35 (2002)) (applying statutory claims filing requirements to
2 intentional tort claims of outrage and defamation). In Atkins, the Court reasoned that, because
3 “an employer is vicariously liable for the intentional conduct of its employees, even if it is
4 tortious, so long as it occurs in the scope of the individual’s employment,” the statutory claims
5 filing requirements also apply to intentional torts committed in the scope of a defendant’s
6 employment. Id. at 1069.

7 Plaintiff’s complaint concerns Defendants’ treatment of him at work, alleging that they
8 refused his request for a four-days-per-week schedule (SAC ¶ 3.6) and subjected him to “greater
9 scrutiny, discipline, correction and supervision” than others similarly situated (SAC ¶ 3.12).
10 Plaintiff’s complaint asserts that “[a]ll actions of individual defendants were done at [the] behest
11 of DSHS” and “DSHS is vicariously liable for all actions of all individual defendants.” (SAC ¶
12 3.17.) In light of these allegations and the reasoning in Atkins, the Court must conclude that Mr.
13 Bromley’s state claims against the individual defendants are brought against them in their
14 official capacities and therefore subject to the state tort filing statute.

15 **Conclusion**

16 Plaintiff’s claims for damages under the ADA are hereby dismissed with prejudice, but
17 his claim for injunctive relief survives. Because Plaintiff has not complied with statutory filing
18 requirements, this Court does not have jurisdiction over his state law claims and they are
19 dismissed without prejudice.

20 The Clerk is directed to send a copy of this order to all counsel of record.

21 Dated: December 17, 2008.

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24 Marsha J. Pechman

25 U.S. District Judge
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